

No. 12334

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United States  
Court of Appeals  
For the Ninth Circuit.

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OSCAR A. MIRANDA, also known as Oscar  
Miranda Arteche,

Appellant,

vs.

TOM C. CLARK, Attorney General of the United  
States, UGO CARUSI, United States Com-  
missioner of Immigration, and WILLIAM I.  
CRANE, Officer in charge of Port of San Luis,  
Arizona,

Appellee.

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Transcript of Record

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Appeal from the United States District Court  
for the District of Arizona.

FILED  
NOV 25 1949

PAUL P. O'BRIEN,



No. 12334

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United States  
Court of Appeals  
For the Ninth Circuit.

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OSCAR A. MIRANDA, also known as Oscar  
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Appeal from the United States District Court  
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## INDEX

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

	PAGE
Agreed Statement of Facts.....	12
Attorneys of Record.....	1
Clerk's Certificate to Record on Appeal.....	22
Findings of Facts and Conclusions of Law....	16
Conclusions of Law.....	17
Findings of Facts.....	16
Judgment and Decree.....	19
Memorandum of Points and Authorities in Support of Plaintiff's Suit for Declaratory Judgment and Petition for Restraining Order....	8
Notice of Appeal to Circuit Court.....	20
Proposed Amendment to Conclusions of Law..	18
Statement of Points.....	22
Stipulation as to Record.....	21
Suit for Declaratory Judgment.....	2, 14
Supplemental Memorandum of Points and Authorities in Support of the Plaintiff's Suit for Declaratory Judgment.....	11
Temporary Restraining Order and Order Setting Down Application for Preliminary Injunction for Hearing.....	10



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United States Attorney.  
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Tucson, Arizona.

Attorneys for Appellee.

In the United States District Court for the  
District of Arizona  
Civil 391—Tucson

OSCAR A. MIRANDA, also known as OSCAR  
MIRANDA ARTECHE,

Plaintiff,

vs.

TOM C. CLARK, Attorney General of the United  
States, UGO CARUSI, United States Commis-  
sioner of Immigration, and WILLIAM I.  
CRANE, Officer in Charge of Port of San  
Luis, Arizona,

Defendants.

### SUIT FOR DECLARATORY JUDGMENT

Comes now the plaintiff above named and for his  
cause of action alleges:

#### I.

That he was born December 11, 1925, of Mexican  
parents, in the City of Los Angeles, State of Cali-  
fornia, United States of America, and that a certi-  
fied copy of his birth certificate is attached hereto,  
and is, by reference, incorporated herein.

#### II.

That about five years after his birth aforesaid,  
his parents removed him from the United States  
to Mexico, where he has resided ever since.



III.

That on or about the 25th day of September, 1946, plaintiff attempted to enter the United States at the Port of San Luis, Arizona, as an American citizen, but he was prevented from so doing by the United States Immigration authorities at said port, although plaintiff repeatedly insisted that he was an American citizen, basing his claim to United States Citizenship, and hence admission to this country, upon his birth in Los Angeles, California, United States of America, and upon the further fact of his right of election to retain his American citizenship, acquired at birth, upon attaining the age of majority.

IV.

That on October 7th, 1946, he was accorded a hearing by a Board of Special Inquiry at the Port of Calaxico, California, and the same day the said Board, disregarding the evidence presented by plaintiff relative to his American birth, announced its decision that plaintiff was not an American citizen, and denied him the right to enter into the United States of America.

V.

That plaintiff has not had a fair hearing on the question of his right to enter the United States as an American citizen by the Board of Special Inquiry for the reason that the said Board excluded him under an erroneous view of the law.

## VI.

That plaintiff was at all the aforementioned times, and now is, in all respects admissible under the 14th Amendment to the Constitution of the United States, the immigration laws and the rules promulgated thereunder as a native-born American citizen.

## VII.

That on the 29th day of October, 1946, plaintiff was issued a temporary parole, beginning on the 29th day of October, 1946, and to end on the 5th day of November, 1946, permitting him admittance into the United States at the port of San Luis, Arizona, for appearance in the United States District Court at Tucson, Arizona. That said parole was granted upon the condition that he depart from the United States on or before the 5th day of November, 1946. That plaintiff has been threatened with arrest and deportation if he does not voluntarily depart from the United States on or before the expiration of the parole period aforesaid.

## VIII.

That plaintiff has never committed any act or executed any instrument of expatriation from the United States or renunciation of his citizenship thereof.

Wherefore, plaintiff prays this honorable Court:

1. To enter a Declaratory Judgment declaring and adjudging that he is a native born citizen of the United States and has never committed any act or executed any instrument of expatriation from

the United States or renunciation of his citizenship thereof.

2. That the defendants be enjoined and restrained from carrying out the threat to arrest and deport plaintiff from the United States.

3. That the plaintiff have such other relief by declaration or otherwise, as to the court may seem meet and proper.

ROSENBERG and  
LA VETTER,  
/s/ TOBY LA VETTER,  
/s/ MARY STELLA ROSENBERG,  
Attorneys for Plaintiff.

State of Arizona,  
County of Pima—ss.

Oscar A. Miranda, also known as Oscar Miranda Arteché, being duly sworn, says that he is the plaintiff in the above-entitled action, that he has read the foregoing complaint and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters which are therein stated on information and belief, and as to those matters he believes it to be true.

/s/ OSCAR A. MIRANDA,  
also known as  
/s/ OSCAR MIRANDA ARTECHE.

Subscribed and Sworn to before me this 4th day of November, 1946.

[Seal] /s/ C. T. REDDINGTON,  
Notary Public.

My commission expires March 16th, 1949.

*Oscar A. Miranda, etc.*

Department of Health  
City of Los Angeles  
Division of Vital Statistics  
Certified Copy Of Local Record

This is to Certify that the attached is a full, true and correct copy of the certificate of birth of Oscar Miranda which is on file in this office, and of which I am the legal custodian.

In Testimony Whereof witness my hand and seal of office, at Los Angeles, California, this 26 day of Aug., 1946.

/s/ [Illegible.]

Registrar of Vital Statistics

By /s/ LaRUE ROBINSON

Deputy Registrar

No. 388102

Fee \$1.00 Paid

1

[Seal]

California State Board of Health  
Bureau of Vital Statistics  
Standard Certificate of Birth

Local Registered No. 18094

County of L. A.

City of " "

No. 1955 Marengo.

Full Name of Child Oscar Miranda.

Personal and Statistical Particulars

Sex of Child Male.

Father

Full Name Manuel Miranda.

Residence 1955 Marengo Ave.

Color or Race Mexican.

Age at Last Birthday 24 Years.

Birthplace Mexico.

Occupation truck driver.

Date of Birth Dec. 11, 1925.

Mother

Full Maiden Name Concha Artechí.

Residence 1955 Marengo Ave., Los Angeles, Cal.

Age at Last Birthday 29 Years.

Color or Race Mexican.

Birthplace Mexico.

Occupation housewife.

Number of children born to this mother, including present birth second.

Number of children of this mother now living two.

Was a prophylactic for Ophthalmia Neonatorum used? Yes 1%.

If so, what? Of silver nitrate.

Certificate of Attending Physician or Midwife

I hereby certify that I attended the birth of this child, who was alive at 7 p.m. on the date above stated.

/s/ MRS. A. E. MICHOLSKY.

Dated Dec. 12, 1925.

Address [Illegible.]

Filed Dec. 14, '25.

[Title of District Court and Cause.]

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF'S SUIT FOR DECLARATORY JUDGMENT AND PETITION FOR RESTRAINING ORDER

All persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States and of the states wherein they reside.

14th Amendment to the Constitution of the United States.

The case of *United States v. Wong Kim Ark*, 18 S. Ct. 458, in construing the meaning of the 14th Amendment, stated: "The fourteenth amendment is the constitution, which declares that 'all persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States and of the states wherein they reside.' is affirmative and declaratory, and intended to allay doubts and settle controversies, and is not intended to impose any new restrictions upon citizenship."

*United States v. Wong Kim Ark*, 18 S. Ct. 456. 169 U. S. 649.

"Native-born citizen, who has not attained age of 21 years, cannot renounce allegiance to United States."

United States ex rel. Baglivo v. Day, 28 F.  
(2d) 44.

“Where a native citizen who is removed to his parents’ country of origin during minority returns to the United States on his majority and elects to remain and to maintain his American citizenship, there is no basis for invoking the doctrine of ‘expatriation,’ which is the voluntary renunciation or abandonment of nationality and allegiance.”

Perkins v. Elg, 59 S. Ct. 884 307 U. S. 325.

“A natural born citizen of the United States who had been threatened with deportation as alien was entitled to declaratory judgment declaring her political status as citizen, since case admitted of immediate and definitive determination of legal rights of parties in adversary proceeding on facts alleged.”

Perkins v. Elg, 99 F. (2d) 408.

“If a child born in the United States is taken, during minority, to the country of its parents’ origin where its parents resume their former allegiance, the child does not thereby lose his citizenship in United States, provided that on attaining majority he elects to retain that citizenship and to return to United States to resume his duties, there being no basis in such situation, by virtue of either treaty or statute, for invoking the doctrine of ‘expatriation.’ ”

Haaland v. Attorney General of the United States, 42 F. S. 13.

[Endorsed]: Filed Nov. 4, 1946.



[Title of District Court and Cause.]

TEMPORARY RESTRAINING ORDER AND  
ORDER SETTING DOWN APPLICATION  
FOR PRELIMINARY INJUNCTION FOR  
HEARING

It appearing from the verified complaint herein that immediate and irreparable injury, loss, and damage will result to plaintiff before notice can be served and a hearing had on the application for a temporary restraining order contained in said complaint if defendants carry out the threat to arrest and deport plaintiff; and it appearing that the said defendants are about to arrest and deport plaintiff and will do so unless restrained; and if such acts are committed by defendants, plaintiff will be restrained of his liberties as an American citizen, and in such case any order or judgment which this Court may later issue on plaintiff's application for a preliminary injunction or for a permanent injunction will be ineffective, it is

Ordered, that defendants, Tom C. Clark, Attorney General of the United States; Ugo Carusi, United States Commissioner of Immigration, and William I. Crane, Officer in Charge of Port of San Luis, Arizona, and all persons in active concert or participation with them, are hereby restrained from arresting or deporting Oscar A. Miranda, also known as Oscar Miranda Arteche, and it is further

Ordered, that this temporary restraining order remain in effect until and including the 13th day of



Nov., 1946, or until further order of this Court and the application for preliminary injunction contained in the complaint herein is set down for a hearing at 10:00 a.m. of the 13th day of Nov., 1946, or as soon thereafter as counsel can be heard.

Dated the 4th day of November, 1946.

/s/ HOWARD C. SPEAKMAN,  
U. S. District Judge.

[Endorsed]: Filed Nov. 4, 1946.

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[Title of District Court and Cause.]

S U P P L E M E N T A L M E M O R A N D U M O F  
P O I N T S A N D A U T H O R I T I E S I N S U P -  
P O R T O F T H E P L A I N T I F F ' S S U I T F O R  
D E C L A R A T O R Y J U D G M E N T

Comes now the plaintiff in the above-entitled action, and files this his supplemental memorandum of points and authorities in support of the plaintiff's suit for declaratory judgment.

The act of voting in a foreign country does not amount to expatriation as a matter of law.

Attorney General of United States v. Ricketts, 165 F (2) 193.

ROSENBERG & LA VETTER,  
By /s/ MARY STELLA ROSENBERG,  
Attorneys for Plaintiff.

Receipt of copy acknowledged.

[Endorsed]: Filed Mar. 8, 1949.

[Title of District Court and Cause.]

### AGREED STATEMENT OF FACTS

It is hereby agreed by and between the above-named plaintiff and the defendants, and each and all of them, that the facts in the above-entitled cause are as follows, and that the said Court may enter judgment accordingly, the same as if such facts had appeared from the preponderance of the testimony, duly and properly given in said Court upon the trial of this cause, and that such judgment may be made and entered, without reference to formality as to the time of setting said cause, such facts so agreed upon being these, to-wit:

Plaintiff, Oscar A. Miranda, also known as Oscar Miranda Arteche, was born December 11, 1925, in the City of Los Angeles, and State of California, of Mexican parents, who took him to Mexico in 1930. He has resided in San Luis, Sonora, Mexico. On August 9, 1946, he registered under the Selective Service and Training Act of 1940, in Tucson, Arizona, and was classified as 1-A and granted permission to visit his parents in San Luis, Sonora, Mexico, from September 20, to September 25, 1946. On the 25th day of September, 1946, he attempted to reenter the United States at the Port of San Luis, Arizona, as an American citizen, but he was prevented from so doing by the United States Immigration authorities at said port, and he was held for a Board of Special Inquiry which, after hearings conducted on September 26, 1946, October 7,

1946, July 10, 1947, December 4, 1947, and January 7, 1948, ordered him excluded on the ground that he had expatriated himself under the provisions of Section 401(e) of the Nationality Act of 1940, by having voted in a contested political election (local primary election for city mayor) in Mexico on April 28, 1946, at San Luis, Sonora, Mexico. He was then 20 years old. The decision of the award was affirmed by the Commissioner of Immigration and Naturalization upon further review, by the Board of Immigration Appeals. On November 4th, 1946, before he had attained his majority, he filed this Suit for Declaratory Judgment (8 U.S.C.A. 903) to determine his citizenship. The hearing of this Suit for Declaratory Judgment was continued at the request of K. Berry Peterson, Assistant United States Attorney, Tucson, Arizona, to await the administrative decision.

Dated this 8th day of March, 1949.

ROSENBERG & LA VETTER,  
By /s/ MARY STELLA ROSENBERG,  
Attorneys for Plaintiff.

/s/ F. E. FLYNN,  
Attorneys for Defendants.

[Endorsed]: Filed Mar. 8, 1949.

[Title of District Court and Cause.]

SUIT FOR DECLARATORY JUDGMENT

Memorandum

This case has been submitted upon an agreed Statement of Facts. Plaintiff avers in his complaint that he was born on December 11, 1925, of Mexican parents in the City of Los Angeles, State of California, United States of America; that about five years after his birth his parents removed him from the United States to Mexico where he resided ever since; that on the 25th day of September, 1946, he attempted to enter the United States at the Port of San Luis, Arizona, as an American citizen but was prevented from so doing by the United States Immigration Authorities at said Port; that he was granted a hearing by a Board of Special Inquiry at the Port of Calaxico, California, but that said Board denied him the right to enter; that afterwards he was issued a temporary parole and is now in the United States under the terms of said parole but he has been threatened with arrest and deportation if he does not depart from this country.

The prayer of the petition is that a declaratory judgment be entered adjudging him to be a citizen of the United States and that defendants be enjoined and restrained from carrying out the threat to arrest and deport plaintiff from the United States.

In the Agreed Statement of Facts it is stated that defendant was born in the United States as

alleged in the complaint and was taken by his parents to Mexico in 1930; that he has resided in San Luis, Sonora, Mexico ever since and that on August 9, 1946, he registered under the Selective Service and Training Act of 1940 in Tucson, Arizona, and was classified as 1-A and was granted permission to visit his parents in San Luis, Mexico, but his attempt to reenter was stopped by the authorities as alleged in the complaint,

It is further agreed by the parties that he voted in a contested political election in Mexico at San Luis on April 29, 1946.

It is provided by Section 401-E of the Nationality Act of 1940 (U. S. Code, Title 8, Section 801) that a person who is a national of the United States whether by birth or naturalization shall lose his citizenship by voting in a political election in a foreign state. It is agreed here that plaintiff did vote in an election in Mexico. By so doing he forfeited his citizenship, he is no longer a citizen of the United States and is not entitled to enter this country.

Judgment must go against him. A proper order may be prepared and submitted to the Court.

/s/ HOLLY,  
Judge.

[Endorsed]: Filed May 13, 1949.

[Title of District Court and Cause.]

FINDINGS OF FACTS AND  
CONCLUSIONS OF LAW

This cause coming on regularly to be heard before the Court this 10th day of June, 1949, upon the Complaint filed herein and the Agreed Statement of Facts, the plaintiff appearing by his attorneys Rosenberg and La Vetter, and the defendants appearing by Frank E. Flynn, United States Attorney for the District of Arizona, and K. Berry Peterson, Assistant U. S. Attorney, the Court on due consideration finds:

Findings of Facts

1. That the plaintiff was born on December 11, 1925 of Mexican parents in the City of Los Angeles, State of California, United States of America.

2. That five years after his birth his parents removed from the United States of America to Mexico, where the plaintiff has resided ever since.

3. That on August 9, 1946, plaintiff registered under the Selective Training and Service Act of 1940, in Tucson, Arizona, U.S.A. and was classified as 1-A and granted permission to visit his parents in San Luis, Mexico.

4. That on the 25th day of September, 1946, the plaintiff attempted to enter the United States of America at the Port of San Luis as an American citizen but was prevented from doing so by the United States Immigration authorities.

5. That plaintiff voted in a contested political election in Mexico, at San Luis, on April 29, 1946, at the age of 20 years.

Conclusions of Law

1. That a person who is a national of the United States, whether by birth or naturalization, loses his citizenship by voting in a contested political election in a foreign state.

2. That plaintiff Oscar A. Miranda, also known as Oscar Miranda Arteche, forfeited his citizenship and is not entitled to enter the United States of America.

Done in open Court this 10th day of June, 1949.

/s/ HOLLY,

U. S. District Judge.

Approved as to form:

/s/ TOBY LA VETTER,

Attorneys for Plaintiff.

F. E. FLYNN,

U. S. Attorney.

/s/ DON HUMMEL,

Assistant U. S. Attorney.

[Endorsed]: Filed June 13, 1949.



[Title of District Court and Cause.]

PROPOSED AMENDMENT TO CONCLUSIONS  
OF LAW

In the above entitled cause the plaintiff, Oscar A. Miranda, also known as Oscar Miranda Arteche, through his attorneys Rosenberg & La Vetter, proposes an amendment to the conclusions of law as submitted by defendants as follows:

Conclusions of Law

1. That a person born in the United States and taken during his minority to the country of his parents' origin and who became subject to a dual nationality, does not lose his citizenship in the United States by voting in a contested local political election during his minority, if on attaining majority he elects to retain his American citizenship.

2. That plaintiff Oscar A. Miranda, also known as Oscar Miranda Arteche, did not forfeit his citizenship and is entitled to enter the United States of America as an American citizen.

Dated: June 1, 1949.

ROSENBERG & LA VETTER,

By /s/ MARY STELLA ROSENBERG,  
Attorneys for Plaintiff.

Receipt of copy acknowledged.

[Endorsed]: Filed June 13, 1949.



In the United States District Court for the District  
of Arizona  
No. Civil-391-Tucson

OSCAR A. MIRANDA, also known as Oscar Mi-  
randa Arteche,

Plaintiff,

vs.

TOM C. CLARK, Attorney General of the United  
States, UGO CARUSI, United States Commis-  
sioner of Immigration, and WILLIAM I.  
CRANE, Officer in Charge of Port of San Luis,  
Arizona,

Defendants.

### JUDGMENT AND DECREE

This matter coming on for hearing on the 10th  
day of June, 1949, upon an Agreed Statement of  
Facts, and the Court having heretofore entered and  
filed its Findings of Facts and Conclusions of Law,

Now, Therefore, by virtue of the law and by  
reason of the premises, it is by the Court

Ordered, Adjudged and Decreed:

1. That the restraining order heretofore issued  
herein as extended restraining the arrest and depor-  
tation of plaintiff herein is hereby revoked;

2. That Oscar A. Miranda, also known as Oscar  
Miranda Arteche, is by reason of forfeiture no

longer a citizen of the United States and is not entitled to remain in the United States.

Done in open Court this . . . . day of . . . . ., 1949.

/s/ HOLLY,

U. S. District Judge.

Approved as to form:

/s/ TOBY LA VETTER,

Attorneys for Plaintiff.

F. E. FLYNN,

U. S. Attorney.

/s/ DON HUMMEL,

Assistant U. S. Attorney.

Attorney for Defendants.

[Endorsed]: Filed June 22, 1949.

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[Title of District Court and Cause.]

## NOTICE OF APPEAL TO CIRCUIT COURT

Notice is hereby given that Oscar A. Miranda, also known as Oscar Miranda Arteche, plaintiff above named, hereby appeal to the Circuit Court of Appeals for the Ninth Circuit from the final judgment and decree entered in this action on the 22nd day of June, 1949.

Dated Aug. 1st, 1949.

ROSENBERG AND

LA VETTER,

By /s/ TOBY LA VETTER.

Receipt of copy acknowledged.

[Endorsed]: Filed Aug. 1, 1949.

[Title of District Court and Cause.]

STIPULATION AS TO RECORD

It is hereby stipulated that the record and proceedings to be included in the record of appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the judgment of the United States District Court of Arizona, in the above entitled matter are as follows:

- (a) Suit for Declaratory Judgment.
- (b) Temporary Restraining Order, etc.
- (c) Supplemental Memorandum of Points, etc.
- (d) Agreed Statement of Facts.
- (e) Memorandum of Judge Holly.
- (f) Findings of Facts and Conclusions of Law.
- (g) Proposed Amendment to Conclusions of Law.
- (i) Judgment and Decree.
- (j) Notice of Appeal.
- (k) Appellant's Statement of Points.
- (l) This Stipulation.

ROSENBERG AND

LA VETTER,

By /s/ TOBY LA VETTER,

Attorneys for Plaintiff.

/s/ K. BERRY PETERSON,

Attorneys for Defendants.

[Endorsed]: Filed Aug. 5, 1949.

[Title of District Court and Cause.]

STATEMENT OF POINTS

The points upon which the appellant intends to rely on this appeal are as follows:

1. The District Court erred in finding that the plaintiff forfeited his United States citizenship.

Respectfully submitted,

ROSENBERG AND  
LA VETTER,

By /s/ TOBY LA VETTER,  
Attorneys for Plaintiff.

Copy received.

[Endorsed]: Filed Aug. 5, 1949.

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[Title of District Court and Cause.]

CLERK'S CERTIFICATE TO RECORD  
ON APPEAL

United States of America,  
District of Arizona—ss:

I, William H. Loveless, Clerk of the United States District Court for the District of Arizona, do hereby certify that I am the custodian of the records, papers and files of the said Court, includ-

ing the records, papers and files in the case of Oscar A. Miranda, also known as Oscar Miranda Arteche, Plaintiff, versus Tom C. Clark, Attorney General of the United States, Ugo Carusi, United States Commissioner of Immigration, and William I. Crane, Officer in Charge of Port of San Luis, Arizona, Defendants, numbered Civ-391 Tucson, on the docket of said Court.

I further certify that the attached and foregoing original documents bearing the endorsements of filing thereon are the original documents filed in said case and designated in the Stipulation as To Record filed therein and made a part of the record attached hereto, and the same are as follows, to-wit:

- (a) Suit for Declaratory Judgment.
- (b) Temporary Restraining Order and Order Setting Down Application for Preliminary Injunction for Hearing.
- (c) Supplemental Memorandum of Points and Authorities in Support of the Plaintiff's Suit for Declaratory Judgment.
- (d) Agreed Statement of Facts.
- (e) Memorandum of Judge Holly.
- (f) Findings of Facts and Conclusions of Law.
- (g) Proposed Amendment to Conclusions of Law.
- (h) Judgment and Decree.

- (i) Notice of Appeal.
- (j) Appellant's Statement of Points.
- (k) Stipulation as to Record.

Witness my hand and the seal of said Court at Tucson, Arizona, this 19th day of August, 1949.

WM. H. LOVELESS,  
Clerk.

[Seal]     /s/ CATHERINE A. DOUGHERTY,  
Chief Deputy.

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[Endorsed]: No. 12334. United States Court of Appeals for the Ninth Circuit. Oscar A. Miranda, also known as Oscar Miranda Arteche, Appellant, vs. Tom C. Clark, Attorney General of the United States, Ugo Carusi, United States Commissioner of Immigration, and William I. Crane, Officer in charge of Port of San Luis, Arizona, Appellee. Transcript of Record. Appeal from the United States District Court for the District of Arizona.

Filed August 22, 1949.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for the Ninth Circuit.